

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 15-cr-00348-ERK-VMS-1
: :
: :
- versus - : U.S. Courthouse
: Brooklyn, New York
: :
JOVAN RENDON-REYES, : January 4, 2019
Defendant : 1:41 PM
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: United States v. Jovan Rendon-
2 Reyes.

3 Your appearances, counsel.

4 MS. MERKL: Taryn Merkl and Maggie Lee for the
5 United States.

6 Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 MR. LIND: Good afternoon, Judge.

9 I'm Richard Lind for Jovan Rendon-Reyes.

10 MS. SULLIVAN: Good afternoon, your Honor.

11 Patricia Sullivan with mary Ann Betts from
12 probation.

13 MR. GJELAJ: And Marc Gjelaaj from probation,
14 your Honor.

15 Good afternoon.

16 THE CLERK: The magistrate took the plea in
17 this case, Judge.

18 THE COURT: Is there any reason I should not
19 accept the plea of guilty?

20 MR. LIND: No, Judge.

21 THE COURT: All right. I adopt the
22 recommendation of the magistrate that the plea was
23 knowingly and voluntarily entered by the defendant with a
24 full understanding of his rights, and the consequences of
25 his plea. There's a factual basis for the plea. I

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1 therefore accept the plea of guilty.

2 I think the allocution by the magistrate is
3 more than adequate but I just want to make sure because
4 we're dealing with complicated guidelines, that you've
5 gone over this him?

6 MR. LIND: Yes, Judge.

7 THE COURT: And --

8 MR. LIND: When you say "this", you're talking
9 about the plea or --

10 THE COURT: The --

11 MR. LIND: Yeah, and the pre-sentence report.

12 THE COURT: Right.

13 MR. LIND: I've had them translated into
14 Spanish for him.

15 THE COURT: And he understands what the maximum
16 sentence is?

17 MR. LIND: Yes. Well, the maximum sentence is
18 life.

19 THE COURT: Yeah, but --

20 MR. LIND: I mean, he's also aware of the
21 guidelines.

22 THE COURT: Yes. Okay. And you've gone over
23 that with him, as well?

24 MR. LIND: Yes, Judge.

25 THE COURT: Okay. All right. Are there any

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1 objections I have to deal with here?

2 MR. LIND: Well, Judge, there is a narrow
3 guidelines issue, and it deals with the government's
4 grouping analysis which in turn deals with the -- there
5 are three Jane Does involving my client; Jane Doe 1, Jane
6 Doe 5, and Jane Doe 6.

7 With respect to Jane Doe 5 which was the minor
8 or is the minor, the government did not seek an
9 enhancement based on vulnerable victim -- for being a
10 vulnerable victim.

11 The government however did seek a vulnerable
12 victim enhancement of two points under the grouping
13 analysis for Jane Does 1 and 6. I was here yesterday,
14 Judge, with the argument of Jane Doe 6. I'll rely on the
15 record that was argued in that case in regard to Jane Doe
16 6, and whether or not a two-point enhancement should be
17 given.

18 But I do strenuously object to a two-point
19 enhancement under the grouping analysis with Jane Doe 1.
20 I don't think under the case law -- and I cite the case
21 law, your Honor, and I know your Honor went over it very
22 thoroughly yesterday. I don't think she was a vulnerable
23 victim, and therefore I don't think that under the
24 grouping analysis, there should be a unit for her under
25 the grouping analysis.

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1 In other words, Jane Doe 1 should be level 34
2 rather than level 36 under the grouping analysis. And if
3 that's the case, there should not be a unit for Jane Doe
4 1. And if that's the case, then the entirety of the
5 grouping analysis should be an increase of three levels
6 rather than four levels.

7 I don't know if your Honor can follow me but
8 it's pretty much set out in the government's plea
9 agreement with the --

10 THE COURT: The guidelines now are what? So we
11 have it --

12 MR. LIND: The guidelines --

13 THE CLERK: It's a three-level increase,
14 Judge --

15 MR. LIND: I'm sorry.

16 THE COURT: -- for the guidelines.

17 MR. LIND: I will wait for the government. You
18 were answering that question?

19 MS. MERKL: (Indiscernible).

20 MR. LIND: Okay. The guidelines, it's level 38
21 which is 235 to 293. Is that correct?

22 MS. MERKL: In the PSR.

23 MR. LIND: And I think that's also your --

24 MS. MERKL: No, our guidelines in the plea
25 agreement were slightly higher.

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1 MR. LIND: Slightly higher?

2 MS. MERKL: Yes.

3 MR. LIND: What were they?

4 MS. MERKL: 262 to 327, your Honor, but that
5 was based in part upon the group -- nongrouping of the
6 money laundering count, as to which we had afforded half
7 the unit, which brought him up to a four-level
8 adjustment. We, as discussed yesterday, understand that
9 probation's analysis as to the money laundering folding
10 into the sex trafficking, so although our plea agreement
11 had estimated it to be a level 39, we understand
12 probation's analysis as to the money laundering, and
13 concur that it would go to the level 38, in the -- as set
14 forth in the PSR.

15 THE COURT: So the guidelines for level 38 are?

16 THE CLERK: 235 to 293, Judge.

17 MR. LIND: Right, that's what I thought you had
18 in your sentencing memorandum.

19 MS. MERKL: That's in the memo, not the plea
20 agreement.

21 MR. LIND: Okay.

22 MS. MERKL: Just to be clear.

23 MR. LIND: I'm sorry. But --

24 THE COURT: The guidelines now, before you -- I
25 deal with this, are what?

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1 MR. LIND: Yes, 235 to 293, level 38.

2 THE CLERK: And the record should reflect the
3 pre-sentence report will be amended to include the two
4 global points which he didn't get. You have 235 to 293.

5 MR. LIND: Yes.

6 THE COURT: Okay.

7 MR. LIND: So I think everyone's agreed with
8 that. And the government's analysis, added four levels
9 to the sentencing computation under the grouping analysis
10 under 3D1.1, 2, 3, and 4, because of -- in part because
11 of the levels for Jane Doe 1, 5 and 6.

12 With regard to Jane -- Jane Doe 5 gets one unit
13 because it's the most serious level, it's the highest
14 level, if your Honor understands what I am saying. You
15 start with a unit that has the highest level, and that
16 was Jane Doe 5.

17 THE COURT: Okay.

18 MR. LIND: Okay. Then there are two units
19 added for Jane Doe 1 and Jane Doe 6, and part of the
20 reason that it's level 36 is because of the two points
21 that were added for vulnerable victim.

22 THE COURT: For Jane Doe 1.

23 MR. LIND: 1 and 6. Two points weren't added
24 for Jane Doe 5, but that doesn't matter. So if you knock
25 off, and I think it should be knocked off, the two points

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1 for Jane Doe 1, for vulnerable victim, then that unit
2 disappears because it's -- no, actually it comes back to
3 as a half unit.

4 MR. GJELAJ: That's correct.

5 MR. LIND: And a half-a-unit would make that --
6 I think two-and-a-half --

7 MR. GJELAJ: That's correct.

8 MR. LIND: No, it would make it all together
9 three units, and if you look at 3D1.4, Judge --

10 THE COURT: Let me hear from my --

11 MR. LIND: Yeah, sure.

12 THE COURT: -- probation advisor.

13 MR. GJELAJ: So we've grouped the money
14 laundering and I'm not sure if the government -- I think
15 the government hadn't, but you found yesterday that it
16 was a groupable offense, so -- and I'll have my
17 colleagues just double-check me on this but for Jane Doe
18 1, if your Honor were to not find for a vulnerable
19 victim, it would be a level 34. That would only get a
20 half-a-unit then at that point.

21 The highest adjusted offense level would be for
22 Jane Doe 5, which is an adjusted offense level of 40.
23 Jane Doe 6 would be an adjusted offense level of 36, and
24 the money laundering gets grouped, the alien smuggling
25 falls by the wayside, and what we would have is a level

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1 34, which would get a half-a-unit. The 40, which would
2 be the driving adjusted offense level, and then Jane Doe
3 would be one full unit, so you would have two-and-a-half
4 units, which translates into the same if it were three
5 units. So three -- two-and-a-half-units, and three units
6 translate into a three-level increase.

7 THE COURT: And what did that make the
8 guidelines?

9 MR. GJELAJ: That makes it -- again, let me
10 just make sure that I am correct --
11 (Pause)

12 MR. GJELAJ: We're at a level 38, your Honor,
13 criminal history one, which is the 235 to 293.

14 THE COURT: So his argument is --

15 MR. GJELAJ: His argument is the same as ours
16 in the sense that we end up in the same place. The
17 government, I think, originally had an additional half
18 unit or a full unit for the money laundering which we do
19 not. It gets grouped in.

20 THE COURT: Okay, so we're not -- it doesn't --
21 your argument, as I understand it, does not affect the
22 ultimate guidelines calculation.

23 MR. LIND: Well, my -- and I can use some
24 clarification here, Judge, I apologize.

25 THE COURT: He's clarifying it.

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1 MR. LIND: Well --

2 THE COURT: You know, I am not an expert in
3 calculating the significance of half units and whole
4 units.

5 MR. LIND: No, no, but what I am saying is,
6 Judge, I believe there's three -- a -- three units --
7 three units here, and my understanding is that that got
8 you up to level 41 or even less than that, which is
9 different than what was in the plea agreement.

10 MS. MERKL: Your Honor, I --

11 THE CLERK: Counsel, you're currently at a
12 level 38, 235 to 293.

13 MR. LIND: Right.

14 THE CLERK: That --

15 MR. LIND: And that's based on getting a four-
16 level increase in the guidelines.

17 MS. MERKL: No, your Honor, the four level
18 increase is the amount set forth in the government's
19 estimate, which was the 262 to 327. Probation -- I agree
20 with Mr. Gjelaaj's analysis that even if the half-a-unit
21 is taken off for Jane Doe 1, and it's made half-a-unit
22 instead of a unit, he's still at three levels of upward
23 adjustment under the multiple count analysis. Because of
24 the way the multiple count analysis works in Section
25 3D1.4, two-and-a-half and three are both treated as three

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1 levels. So that half-a-unit in the margin doesn't make
2 an ultimate difference as to the calculation, as to this
3 defendant, to Jane Doe 1 specifically, your Honor, the
4 government included her -- our estimate of her being a
5 vulnerable victim, based again on her personal
6 circumstances which were somewhat different from the
7 other victims in this case.

8 We -- you know, as set forth in --

9 THE COURT: No, I just want to know, does it
10 make a difference?

11 MS. MERKL: It does not.

12 THE COURT: So I don't know why we have to get
13 into it.

14 MR. LIND: Okay, Judge, I --

15 THE COURT: I mean, do you want Mr. Gjelaaj to -
16 - do you want to sit down with him for a minute and let
17 him go over it with you?

18 MR. LIND: Yes, if you don't mind, Judge.

19 THE COURT: No, I don't mind.

20 MR. LIND: All right. Okay.

21 THE COURT: That's one of the reasons he's
22 here.

23 MR. LIND: Thank you.

24 (Pause)

25 MR. LIND: Once again, Judge, I apologize.

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1 It's a little bit confusing. So I take it we're back at
2 level 38; is that correct?

3 MS. SULLIVAN: Yes, your Honor.

4 MR. LIND: That said, Judge, I still request as
5 I had in my sentencing memorandum, that 235 to 293, is
6 basically 19 to 24 years, a little bit more than 24 --
7 up on the high side.

8 The minimum is 15 years, your Honor. I think
9 something between 15 and 19 is sufficient, is a
10 sufficient sentence in this case. My client pled guilty.
11 He had a horrible background, and is being punished for
12 his -- the conduct in this case.

13 I see no reason for a sentence of anything more
14 than 19, as an upward range, and in fact, that's the
15 lower part of the guidelines range we have right now.

16 He -- I'm sure your Honor is very familiar with
17 all this language, but I think it's really important to
18 emphasize, even though it may be somewhat overused
19 sometimes, the sentence should be enough, yet not to take
20 the language out of these leading cases, you know, that
21 enough sufficient but not greater as the statute
22 provides, to comply with the purposes of 3553(a).

23 I think the sentence in the range of 15 to 19
24 years certainly is sufficient to satisfy the meaning of
25 the statute. My clients grew up in a physically abusive

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1 household. He had very little grading -- schooling. He
2 quit school after the sixth grade because his parents
3 could not afford even the meager school-related expenses.

4 And then secondly as I point out in my
5 sentencing memo, Judge, his post-arrest rehabilitation at
6 the MDC, he had a clean record where he's had no conflict
7 there at all over the last two years, I think should be
8 taken into consideration.

9 He's a young man. He has a chance of
10 rehabilitating his life. He really has no other prior
11 criminal record. This has not been -- he's remorseful.
12 Judge, I believe that a sentence in the range of 15 to 19
13 years is appropriate. Thank you.

14 MS. MERKL: Your Honor, consistent with the
15 government's sentencing letter, we respectfully submit
16 that a sentence at the high end of the applicable range
17 is appropriate and we're making that suggestion, not
18 mechanically by any means, your Honor, but with the
19 specific reference to certain facts in this case that are
20 egregious and take it to the higher end of the applicable
21 range.

22 I think it is highly notable that the two women
23 most affected by this particular defendant, your Honor,
24 were minors. Jane Doe 5 was only 16 when the defendant
25 raped her, and forced her into prostitution. Jane Doe 5

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1 was 17 when the defendant arranged for her to be smuggled
2 into the United States, and required to prostitute.

3 He controlled these women with threats of
4 violence, and fear. Unfortunately, that seems to be the
5 pattern that this family employed. And it's notable,
6 your Honor, that these women were prostituted for a
7 lengthy period of time. This is not, you know, a few
8 months or a year. Jane Doe -- this was a substantial,
9 you know, period of time and the long term impacts on
10 these women is significant.

11 And defendant is citing to his childhood, and
12 his alleged post-arrest rehabilitation as reasons for a
13 downward departure but unfortunately, your Honor, as --

14 THE COURT: I'm not downwardly departing from
15 those grounds.

16 MS. MERKL: Thank you, your Honor. Even within
17 the range, the consideration of his childhood, and his
18 rehabilitation, your Honor, should not be given much
19 weight. The childhood circumstances of this defendant
20 frankly are similar, if not pleasantly better than the
21 circumstances of the women and girls that were victimized
22 by this organization, and his post-arrest
23 "rehabilitation", the MDC, is virtually nothing. He
24 completed one program. I'm not knocking the programs at
25 the MDC, but he completed a total of one program and had

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1 no disciplinary issues, which is precisely what is
2 expected of an inmate in the MDC. Anything less than
3 that would be grounds for a variance upward frankly.

4 The defendant's rehabilitation is certainly not
5 extraordinary of the sort that would cause it to be a
6 significant factor for sentencing.

7 The bottom line, your Honor, is that the
8 guidelines in this case are appropriate to keep Mr. Jovan
9 Rendon-Reyes, who I would note is younger than some of
10 the other members of this family, and thus, in the
11 government's view, a greater risk of recidivism in terms
12 of returning to Mexico, and recruiting additional
13 females, incarcerated for an appropriate period of time
14 to provide specific deterrence and incapacitation, such
15 that his incarceration would protect the community in
16 Mexico, and protect additional girls from victimization,
17 while also serving the goals of punishment and
18 deterrence, and all of the other 3553(a) factors
19 discussed in the statute.

20 (Pause)

21 MS. MERKL: Your Honor, I would note, I was
22 looking through the records, that Mr. Jovan Rendon-Reyes
23 exerted control and influence over Jane Doe 5 for a
24 period of seven years.

25 THE COURT: How old -- I'm sorry, the two women

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1 were how old now? One was Jane Doe 5, was 16?

2 MS. MERKL: Jane Doe 5 was 16 when she was
3 first raped by the defendant and forced into
4 prostitution, and then shortly thereafter, after Jane Doe
5 5 is able to -- I'm sorry, your Honor, shortly thereafter
6 he forced Jane Doe 17 -- 7 -- 5 into prostitution, and
7 she was 17.

8 THE COURT: Which one? I'm sorry, I didn't
9 hear you.

10 MS. MERKL: Too many numbers.

11 THE COURT: Yeah.

12 MS. MERKL: Sorry?

13 THE COURT: Which one was 17, did you say?

14 MS. MERKL: Jane Doe 5.

15 THE COURT: Jane Doe 5 was 17, and the other
16 one was Jane Doe?

17 MS. MERKL: I'm sorry, your Honor, Jane Doe 5
18 is the minor.

19 THE COURT: She was the one? I thought you
20 said they were both.

21 MS. MERKL: I apologize, your Honor. Jane Doe
22 1 was 19 when she was first recruited. Jane Doe 6 was
23 not a minor. It was my mistake. I misspoke.

24 (Pause)

25 THE COURT: I'm just looking for the rape in

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1 the pre-sentence report, that you just referred to.

2 MS. MERKL: Your Honor, in paragraph 24, it
3 describes how Jovan held Jane Doe 5 at his relative's
4 home in Mexico and forced to have sex with him. He's not
5 allowed her to telephone her family, and she did locate a
6 telephone to call her family, continues onto page 13 of
7 the PSR, he found out and slapped her --

8 THE COURT: Can you point me to the --

9 MS. MERKL: Paragraph 24, your Honor.

10 THE COURT: I know, but on what sentence. She
11 was 16.

12 (Pause)

13 THE COURT: All right. Does the defendant wish
14 to speak?

15 MR. LIND: Yes, Judge. I believe so.

16 Do you want to tell the Judge something?

17 THE DEFENDANT: First of all, I would like to
18 ask the victims for their forgiveness, and I am very
19 sorry. I'd also like to apologize to the United States
20 for having entered the country. And I would like the
21 prosecutor to forgive me, as well. That's all. That's
22 all.

23 (Pause)

24 THE COURT: So his guidelines includes for
25 Ruggiero (ph.).

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1 MS. MERKL: It does, your Honor. That was the
2 extra level-and-a-half essentially for the two additional
3 victims resulted in the total unit calculation of two-
4 and-a-half levels.

5 THE COURT: I'm going to sentence the defendant
6 to the custody of the Attorney General for a period of
7 240 months, five years supervised release, with the
8 following special conditions. If removed, the defendant
9 may not re-enter the United States illegally. The
10 defendant shall cooperate with, and abide by all
11 instructions of immigration authorities, comply with any
12 potential restitution, and forfeiture orders.

13 Upon request, the defendant shall provide the
14 U.S. Probation Department with full disclosure of
15 financial records, including commingled income, expenses,
16 assets, liabilities, to include yearly income tax
17 returns, with the exception of the financial accounts
18 reported in (indiscernible) within the pre-sentence
19 report.

20 The defendant is prohibited from maintaining
21 and/or opening additional individual and/or joint
22 checking or savings or other financial accounts, in a
23 personal or business purposes without the knowledge, and
24 approval of the probation department.

25 The defendant shall cooperate with the

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1 probation officer in the investigation of his financial
2 dealings, and shall provide truthful monthly statements
3 of his income and expenses. The defendant shall
4 cooperate in the signing of any necessary authorization
5 to release information forms permitting the probation
6 department access to his financial information and
7 records.

8 The defendant shall comply with any applicable
9 state and/or federal sex offender registration
10 requirements as instructed by the probation officer, the
11 Bureau of Prisons, or any state offender registration
12 agency in the state where he resides or works, or is a
13 student.

14 I also impose a \$200 special assessment. I
15 believe that the sentence here is sufficient to reflect
16 the seriousness of his offense, and the other factors set
17 out in Section 3553(a).

18 THE CLERK: Do you have a similar forfeiture
19 issue or restitution?

20 MR. LIND: Similar to what?

21 THE CLERK: Everybody else; you want to brief
22 it?

23 MR. LIND: I might as well reserve the right
24 to.

25 THE CLERK: 45 days. Disposition of remaining

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1 counts or underlying indictments?

2 MS. MERKL: Your Honor, the government moves to
3 dismiss the open counts in the underlying indictment.

4 THE COURT: They're dismissed.

5 THE CLERK: Has the defendant agreed to waive
6 his right to appeal (indiscernible)?

7 MS. MERKL: Yes, your Honor, (indiscernible)
8 365.

9 MR. LIND: (Indiscernible). I mean --

10 THE CLERK: If he has a right to an appeal,
11 have you advised counsel, does he understand that if he
12 has a right to appeal, he can do so?

13 MR. LIND: I will advise him of that. I just
14 want to be on the record as I (indiscernible).

15 MS. MERKL: And your Honor, the issue of a
16 fine, just for the oral pronouncement of sentence?

17 THE COURT: No fine.

18 MS. MERKL: Thank you.

19 THE CLERK: Thank you, counsel.

20 MR. LIND: Thank you very much.

21 (Matter concluded)

22 -o0o-

23

24

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 19th day of November, 2019.


Linda Ferrara

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